



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 14, 1995

Mr. Larry Persky
Staff Attorney
Legal Services Division
Texas Natural Resource Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR95-948

Dear Mr. Persky:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 33736.

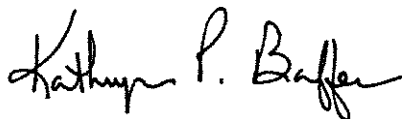
The Texas Natural Resource Conservation Commission (the "commission") received an open records request for copies of complaints against a particular individual engaged in the unauthorized dumping of solid waste in a stock tank which was being used as a landfill. Additionally, the requestor specifically asks for the names and addresses of each complainant. You have submitted for our review five marked documents which you refer to as documents A-1 through A-5. You seek to withhold, pursuant to the informer's privilege, as incorporated into section 552.101 of the Government Code, the marked portions of the documents submitted for our review because the information tends to identify the individual or individuals who reported the violations. You contend that two documents should be withheld in their entirety. Regarding the three remaining documents, you contend that the informants' names, addresses, titles, and telephone numbers should be withheld.

The "informer's privilege" aspect of section 552.101 protects the identity of persons who report violations of a civil or criminal statute. *See* Open Records Decision Nos. 391 (1983), 191 (1978). Though the privilege ordinarily applies to the efforts of law enforcement agencies, it can apply to administrative officials with a duty of enforcing particular laws. Attorney General Opinion MW-575 (1982); Open Records Decision Nos. 285 (1981), 279 (1981); *see also* Open Records Decision No. 208 (1978).

The commission is the agency responsible for the management of municipal, industrial, and hazardous waste in the state. See Health & Safety Code §§ 361.011 & 361.017. Pursuant to section 361.024 of the Health & Safety Code, the commission may develop rules consistent with Chapter 361 of the code concerning the control of solid waste. Section 361.252 outlines available administrative penalties the commission may assess against a person in violation of Chapter 361 or a rule or order adopted by the commission concerning solid waste that is under the commission's jurisdiction. You explain that the allegations in this case, if true, may reflect a possible violation of section 361.223 for which civil penalties may be imposed in accordance with section 361.252. Given this information, we conclude that the commission may properly raise the informer's privilege with regard to those portions of the requested records that reveal or tend to reveal the identity of the complainants. After reviewing the records at issue, we conclude that some of the information in the submitted documents may be withheld from the requestor pursuant to section 552.101 and the informer's privilege. We note that we disagree with your contention that all of documents A-1 and A-5 should be withheld from the requestor. We have marked the portions of all of the documents which the commission may withhold from the requestor pursuant to section 552.101.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kathryn P. Baffes
Assistant Attorney General
Open Records Division

KPB/RHS/rho

Ref: ID# 33736

Enclosures: Marked documents

cc: Mr. William G. Herrmann
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(w/o enclosures)